

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Hon. Nancy G. Edmunds

-VS-

Criminal No. 10-20636

MARC ANDRE CUNNINGHAM,

Sentencing Date: February 24, 2015

Defendant.

**GOVERNMENT'S SENTENCING MEMORANDUM
AS TO DEFENDANT MARC ANDRE CUNNINGHAM**

The government submits the following memorandum in connection with the sentencing of defendant Marc Andre Cunningham on February 24, 2015. As part of its sentencing recommendation, the government moves for a downward departure from the applicable sentencing guidelines range of imprisonment for Cunningham, pursuant to Sentencing Guidelines section 5K1.1, because of his substantial assistance in the investigation and prosecution of other criminal activity.

DISCUSSION

As the Court is aware, Title 18, United States Code, Section 3553(a) requires the Court to impose a sentence which is sufficient but not greater than necessary to comply with the purposes set forth in that section. The government will summarize the statutory factors most applicable to this case.

I. Statutory Factors

A. The Nature and Circumstances of the Offense

Marc Andre Cunningham (“Cunningham”) became friends with Kwame Kilpatrick when they attended Florida A&M together in the early 1990s. In 2004, Mayor Kilpatrick persuaded Cunningham and his family to move from Chicago to Detroit with the promise of employment for Cunningham and his wife. Between 2006 and 2008, Cunningham worked for Mayor Kilpatrick as his executive assistant. However, Kilpatrick never provided a job to Cunningham’s wife.

During the time Cunningham was working as an executive assistant to Mayor Kilpatrick, Cunningham’s father-in-law introduced him to several individuals who purported to be offering insurance to municipal employees. In fact – and unbeknownst to Cunningham – the individuals included undercover FBI agents and informants who were part of an FBI undercover operation based out of New Jersey. Cunningham introduced the undercover agents and informants to Bernard Kilpatrick

and his business partner. Without prompting from Cunningham, an undercover agent offered Cunningham \$5,000 cash, which Cunningham accepted and spent.

In early 2010, FBI agents confronted Cunningham about his accepting the \$5,000. Cunningham admitted taking the money and spending it and immediately agreed to cooperate. During his cooperation, Cunningham revealed his involvement as a consultant for Syncom, a venture capital company located in Maryland. Cunningham's close family friend, Terry Jones, was a principal in Syncom. Jones entered into an agreement to pay Cunningham a 1% commission if he assisted Jones in getting a \$30 million investment from the City of Detroit's retirement systems. Cunningham introduced Jones to pension trustees and in 2006 the pension funds agreed to a \$30 million investment in Syncom. Cunningham received a 1% commission from Jones, which totaled \$300,000 and was paid in quarterly payments of \$25,000 over a period of 3 years. Then Mayor Kilpatrick forced Cunningham to pay a kickback of a portion of the commission to Bernard Kilpatrick. The payments to Bernard totaled \$15,000. Cunningham also shared approximately \$20,000 of the commission with Jeffery Beasley, who had a seat on both of the pension boards by virtue of his position as Treasurer of Detroit.

B. History and Characteristics of the Defendant

Cunningham is 45 years old and has a minor criminal record that dates back to when he was ages 18-22. He has no criminal history points based on the date of these petty convictions. Upon his initial contact by law enforcement, Cunningham accepted responsibility for his involvement and cooperated fully with the government. Indeed, Cunningham provided the government with information about which it was previously unaware that detailed corruption within the Kilpatrick administration. Moreover, it is the government's view that he is truly remorseful and has exhibited that remorse repeatedly through his willingness to meet with the government and to testify against even his closest friends, such as Beasley and Kilpatrick.

C. Seriousness of the Offense, Promoting Respect for the Law, Providing Just Punishment, and Affording Adequate Deterrence

Cunningham's offense harmed the fabric of honest City government and is therefore serious. Accordingly, there is a need for a sentence to deter others from committing similar misconduct. Deterring Cunningham, himself, from future misconduct should not be a significant factor because he has demonstrated that he is truly remorseful and has committed no further misdeeds once he was no longer operating within the corrupt orbit of Kwame Kilpatrick.

D. Kinds of Sentences Contemplated by the Sentencing Guidelines

As part of Cunningham's plea agreement, the parties agreed that the correct calculation of his sentencing guidelines range of imprisonment is 30 to 37 months. The probation department concurs with this calculation.

II. Motion for Downward Departure for Substantial Assistance

The government requests that the Court grant a downward departure from Cunningham's guidelines range of imprisonment because of his substantial assistance in the investigation and prosecution of Kwame Kilpatrick and Bernard Kilpatrick in the City of Detroit case, as well as his assistance in the City pension fund investigation and trial of Jeffery Beasley.

From the moment he was first contacted by the FBI, Cunningham was cooperative and forthright. Significantly, Cunningham volunteered information about misconduct of which the government was unaware, namely, the fact that Kilpatrick, as he did with Emma Bell, demanded Cunningham kick back a portion of his commission payments. On both the City corruption and pension funds cases, Cunningham took part in numerous proffers and meetings in preparation for trial. He also testified in both trials where he was extremely candid.

The government found Cunningham's statements and testimony to be reliable and credible, as it was corroborated by other witnesses, bank records and pension

board minutes. By their verdicts in both the city corruption and pension fund cases, two juries appear to have concurred in Cunningham's credibility.

CONCLUSION

Based on the foregoing, the government recommends that the Court grant the government's motion for a downward departure based on Cunningham's substantial assistance and sentence him to no greater than a 3-year period of probation, with the first year to be served at a residential re-entry center.

Respectfully submitted,

BARBARA L. McQUADE
United States Attorney

s/R. MICHAEL BULLOTTA
Assistant United States Attorney

s/MARK CHUTKOW
Assistant United States Attorney

Dated: February 23, 2015

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2015, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to:

Vincent J. Toussaint
Attorney for Defendant

s/R. MICHAEL BULLOTTA
Assistant United States Attorney

Dated: February 23, 2015